

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SEABOARD FOODS LP,

Defendant.

Civil Action No. \_\_\_\_\_

**COMPLAINT**

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (EPA), files this complaint and alleges as follows:

**I. STATEMENT OF THE CASE**

1. This is a civil action brought against Seaboard Foods LP ("Seaboard") for appropriate relief, including a permanent or temporary injunction and civil penalties, for violations of the Clean Water Act (CWA), 33 U.S.C. § 1311 et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., at Seaboard's concentrated animal feeding operations (CAFOs) and related facilities in the states of Oklahoma, Colorado, Kansas, and Texas.
2. The United States seeks to enjoin Defendant to comply with the permit and related requirements of the construction storm water provisions of the CWA, 33 U.S.C. §§ 1251-



1387, and the reporting requirements for releases of hazardous substances, as required by Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). The United States also seeks civil penalties for Defendants' violations, and such other relief as the Court may deem appropriate.

## **II. JURISDICTION, AUTHORITY, NOTICE AND VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), and 28 U.S.C. §§ 1331, 1345 and 1355.
4. Venue is proper in this district pursuant to section 309(b) of the CWA, 33 U.S.C. § 1319(b), section 109(c) of CERCLA, 42 U.S.C. § 9609(c), and 28 U.S.C. §§ 1391(b)-(c), 1395, as this is a judicial district in which Seaboard is doing business and within which many of the United States' claims arose.
5. Notice of the commencement of this action and of the filing of the complaint has been given to the State of Oklahoma.

## **III. DEFENDANT**

6. Defendant Seaboard is a corporation organized under the laws of the state of Oklahoma with its principal place of business located at 9000 West 67<sup>th</sup> Street, Shawnee Mission, Kansas 66201. Among other things, Seaboard is engaged in the business of breeding and raising swine on large scale concentrated animal feeding operations (CAFOs) in Oklahoma, Colorado, Kansas and Texas.
7. Seaboard is a "person" as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).



8. Seaboard owned or operated the subject CAFOs and related facilities at all relevant times.

#### **IV. STATUTORY AND REGULATORY FRAMEWORK**

##### **A. THE CLEAN WATER ACT**

9. The objective of the Clean Water Act is to restore and maintain the chemical, physical and biological integrity of the nation's waters. Section 101(a) of the Act, 33 U.S.C. § 1251(a).
10. Under section 301(a) of the Act, 33 U.S.C. § 1311(a), it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, certain sections of the Act, including sections 402 and 404 of the Act, 33 U.S.C. §§ 1342 and 1344.
11. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include "an individual [or] corporation."
12. Section 502(6) of the CWA, 33 U.S.C. § 1362(12), defines "pollutant" to include:

"dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water."
13. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."
14. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."
15. "Point source" is defined by Section 502(14) of the CWA, 42 U.S.C. § 1362(14), as "any discernible, confined and discrete conveyance, including but not limited to any pipe,



ditch, channel, conduit . . . container . . . [or] concentrated animal feeding operation . . . from which pollutants are or may be discharged.”

16. Pursuant to § 402 of the CWA, 33 U.S.C. § 1342, EPA established a National Pollutant Discharge Elimination System (“NPDES”) permit program to control discharges from point sources into waters of the United States. In accordance with this section, an NPDES permit is required to be obtained from the EPA, or a state authorized to administer the NPDES program, prior to the discharge of pollutants from point sources into waters of the United States.
17. Within the context of the NPDES program, pursuant to section 402, 33 U.S.C. § 1342, EPA promulgated further regulations setting forth the permit application requirements for discharges of storm water. 55 Fed. Reg. 48,063 (Nov. 16, 1990). These regulations are codified at 40 C.F.R. § 122.26 (“storm water regulations”).
18. Pursuant to CWA § 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B), and 40 C.F.R. § 122.26, dischargers of “storm water associated with industrial activity” are required to apply for an individual NPDES permit or to seek coverage under a storm water general permit.
19. In 40 C.F.R. § 122.26(b)(14), EPA defined the term “storm water discharge associated with industrial activity” to include storm water discharges from “construction activity including clearing, grading, and excavation” activity, that results in a disturbance of five or more acres of total land area. 40 C.F.R. § 122.26(b)(14)(x).
20. To facilitate the process of complying with the NPDES requirements at construction sites in EPA’s Region 6, EPA has issued an “NPDES General Permit for Storm Water Discharges from Construction Activities in Region 6,” which authorizes certain



discharges of storm water associated with construction activities. 63 Fed. Reg. 36490 (July 6, 1998) (hereinafter “the General Permit”). The General Permit became effective on July 6, 1998.

21. Pursuant to the General Permit, owners and operators of sites at which construction activity disturbs five or more acres and may result in “the discharge of storm water associated with construction activity” must obtain coverage under either the General Permit or an individual NPDES permit to comply with the Act, and must develop and implement a Storm Water Pollution Prevention Plan. Section 402 of the Act, 33 U.S.C. § 1342; 40 C.F.R. Part 122; 63 Fed. Reg. 36490.
22. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), authorizes the Administrator to bring a civil action for injunctive relief and civil penalties pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), for violations of the CWA, including the discharge of any pollutant without, or not in compliance with the terms and conditions of, an NPDES permit and the violation of any condition or limitation of an NPDES permit.
23. Pursuant to Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996), 40 C.F.R. §§ 19.2, 19.4 (Table), 61 Fed. Reg. 69,360 (Dec. 31, 1996), and 69 Fed. Reg. 7121 (February 13, 2004), the Court may assess civil penalties of up to \$27,500 per day for violations of the CWA occurring after January 30, 1997, and up to \$32,500 per day for violations occurring after March 15, 2004.

**B. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT**

24. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations set forth at 40



C.F.R. 302.6 (2002) require “[A]ny person in charge of a . . . facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such . . . facility in quantities equal to or greater than those determined pursuant to section 9602 of this title, immediately notify the National Response Center . . . of such release.

25. Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), defines “facility” to mean, “(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.”
26. Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), defines “release” to mean, “any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment . . . .”
27. Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), defines “hazardous substance” to mean, “. . . (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title . . . .”
28. Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), authorizes the President to bring a civil action to assess and collect a civil penalty for each day during which any person fails to provide the required notice under section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
29. Pursuant to Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996), 40 C.F.R. §§ 19.2, 19.4



(Table), 61 Fed. Reg. 69,360 (Dec. 31, 1996), and 69 Fed. Reg. 7121 (February 13, 2004), the Court may assess civil penalties of up to \$27,500 per day for violations of the CERCLA occurring after January 30, 1997, and up to \$32,500 per day for violations occurring after March 15, 2004.

## **V. CLAIMS FOR RELIEF**

### **A. FAILURE TO OBTAIN AND COMPLY WITH CWA STORM WATER PERMIT**

30. Paragraphs 1 through 23 are realleged and incorporated herein by reference.
31. Seaboard's construction of the Dorman South Sow Farm Site, Farm No. 48, located at Section 1, Township 2, Range 21, in Beaver County, Oklahoma ("Dorman South site") began on or about March 1, 1999.
32. During the construction of the Dorman South site, Seaboard, or persons acting on its behalf, disturbed five or more acres – thus making these activities "industrial activities," within the meaning of 40 C.F.R. § 122.26(b)(14)(x).
33. As a result of the construction activity at the Dorman South site, Seaboard discharged eroded soil, sediment, and other substances associated with earth-disturbing activities, which are "pollutants" as defined by section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, into the Beaver River, which are "waters of the United States" within the meaning of section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.
34. At all times relevant to this action, Seaboard owned the Dorman South site, and was therefore required to obtain NPDES permit coverage for discharges of pollutants associated with industrial activities at the site, and to comply with all requirements and conditions of the Act, its regulations, and the applicable permit, including the



development and implementation of a Storm Water Pollution Prevention Plan. See CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122, Reissued General Permit, Part V, 63 Fed. Reg. 36490, 36502 (July 6, 1998).

35. At no time has Seaboard submitted a Notice of Intent to obtain coverage under the General Permit, or otherwise applied for an individual or group NPDES permit, for construction activities at the Dorman South site, as required by the applicable regulations and the General Permit. See 40 C.F.R. § 122.26(c); 63 Fed. Reg. 36490 (July 6, 1998).
36. At no time has Seaboard submitted or implemented a SWPPP for the Dorman South site, as required by the General Permit. See 63 Fed. Reg. 36490 (July 6, 1998).
37. On the basis of the foregoing, at the Dorman South site, Seaboard and/or persons acting on its behalf discharged pollutants into waters of the United States without NPDES permit coverage, in violation of section 301 of the CWA, 33 U.S.C. § 1311.
38. Upon information and belief, Seaboard has engaged in construction activities at one or more of its other CAFO facilities that has resulted in a disturbance of greater than five acres and the discharge of pollutants, including eroded soil, sediment, and other substances associated with earth-disturbing activities, into waters of the United States, without obtaining coverage under the General Permit, and without otherwise applying for an individual or group NPDES permit, as required by the Clean Water Act and the applicable regulations.
39. Based upon the foregoing, each day that Seaboard discharged pollutants into waters of the United States without an NPDES permit at the Dorman South site was a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).



40. As provided in section 309 of the CWA, the violations set forth above subject Seaboard to injunctive relief and civil penalties of up to \$27,500 per day for violations of the CWA occurring after January 30, 1997, and up to \$32,500 per day for violations occurring after March 15, 2004. See Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996), 40 C.F.R. §§ 19.2, 19.4 (Table), 61 Fed. Reg. 69,360 (Dec. 31, 1996), and 69 Fed. Reg. 7121 (February 13, 2004).

#### **B. FAILURE TO COMPLY WITH CERCLA REPORTING REQUIREMENTS**

41. Paragraphs 1 through 8 and 24 through 29 are realleged and incorporated herein by reference.
42. At all times relevant to this Complaint, Seaboard owned and/or operated the Choate Sow Farm, Farm No. 65, located at Section 10, Township 19N, Range 8W, in Kingfisher County, Oklahoma.
43. The Choate Sow Farm is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
44. Ammonia is a "hazardous substance" as defined by Section 101(14)(B) of CERCLA, 42 U.S.C. § 9601(14)(B), because it is an "element, compound, mixture, solution, or substance designated pursuant to Section 102" of CERCLA, 42 U.S.C. § 9602, and the regulations at 40 C.F.R. § 302.4. The reportable quantity for ammonia is 100 pounds per day. Id. (Table).
45. At all times relevant to this Complaint, the Choate Sow Farm has had releases of ammonia in excess of 100 pounds per day, and such releases are and have been known to Seaboard.



46. Upon information and belief, one or more other facilities owned by Seaboard have releases of ammonia in excess of 100 pounds per day, and such releases are and have been known to Seaboard.
47. Seaboard failed to timely notify the National Response Center as required by Section 103(a) of CERCLA regarding the releases of ammonia in excess of the reportable quantity from the Choate Sow Farm and from other Seaboard facilities.
48. Seaboard's failure to timely notify the National Response Center of numerous releases of a hazardous substance from its facilities, as described above, constituted a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). In addition, based on the foregoing, each day that Seaboard failed to make the appropriate notification, as to each facility, is a separate violation of section 103(a), 42 U.S.C. § 9603(a).
49. Pursuant to Section 109(c) of CERCLA, 42 U.S.C. § 9609(c), Seaboard is subject to a civil penalty of up to \$27,500 per day for violations of the CERCLA occurring after January 30, 1997, and up to \$32,500 per day for violations occurring after March 15, 2004. See Pub. L. 104-134, 110 Stat. 1321 (April 26, 1996), 40 C.F.R. §§ 19.2, 19.4 (Table), 61 Fed. Reg. 69,360 (Dec. 31, 1996), and 69 Fed. Reg. 7121 (February 13, 2004).

## **VI. PRAYER FOR RELIEF**

Wherefore, Plaintiff, the United States of America, requests that the Court enter judgment for the United States and against Seaboard as follows:

1. Order Seaboard to institute corrective measures and to operate their swine CAFO facilities in Oklahoma, Colorado, Kansas, and Texas in such a manner as will result in no further



violations of the Clean Water Act and the Comprehensive Environmental Response,  
Compensation, and Liability Act;

2. Assess civil penalties of up to \$32,500 per day for each day of each violation of the  
Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability  
Act, consistent with the applicable civil penalty provisions in those Acts;

4. Grant the United States its costs and disbursements in this action; and

5. Grant such other and further relief as the Court deems appropriate.

Respectfully Submitted,

~~SUE~~ ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources  
Division

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NICOLE VEILLEUX  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
Department of Justice  
P.O. Box 7611  
Washington, D.C. 20530  
(202) 616-8746

OF COUNSEL:  
BRUCE FERGUSON  
Special Litigation and Projects Division  
Office of Regulatory Enforcement  
United States Environmental Protection Agency

LORRAINE DIXON  
Office of Regional Counsel, Region 6  
United States Environmental Protection Agency



JOHN C. RICHTER  
United States Attorney for Western  
District of Oklahoma

/s/ Steven K. Mullins

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STEVEN K. MULLINS, OBA#6504  
Assistant United States Attorney  
210 Park Avenue, Suite 400  
Oklahoma City, OK 73102  
405/553-8804  
Steve.mullins@usdoj.gov